

Garrett
67047

11/29

IN THE SUPREME COURT OF ALABAMA FOR
PETITION FOR WRITS OF CERTIORARI.

CARL EMMETT WYATT.
APPELLANT.

VS.

STATE OF ALABAMA.
APPELLEE.

ON APPEAL FROM THE COURT OF CRIMINAL FROM
A REHEARING PURSUANT TO MEMORANDUM
RELEASED AUGUST 13TH/2004

ON APPEAL FROM THE CIRCUIT COURT OF
AUTAUGA COUNTY. (CC-99-322-60)

BRIEF OF APPELLANT.

CARL EMMETT WYATT.
EASTERLINE CORRECTIONAL
200 WALLACE DRIVE
Clio, ALABAMA 36017



STATEMENT REGARDING ORAL ARGUMENT.

THE APPELLANT DOES NOT REQUEST ORAL ARGUMENT.
BECAUSE THE ISSUE BEFORE THIS COURT ARE ADEQUATELY BRIEFED
AND THE COURTS DECISIONAL PROCESS WOULD NOT BE SIGNIF-
-ICANTLY AIDED BY ORAL ARGUMENT. ALA.R. APP. P. RULE 34-

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STATEMENT OF THE CASE

CARL EMMETT WYATT APPEALS FROM THE JUNE 4, 2002 JUDGMENT OF THE AUTAUGA COUNTY CIRCUIT COURT THE HONORABLE JOHN BUSH PRESIDING, SUMMARILY DENYING RELIEF SOUGHT BY THIS MAY 11, 2001 ALA.R.Crim.P RULE 32 PETITION.

WYATT'S RULE 32 PETITION STEMMED FROM HIS MAY 8, 2000 AUTAUGA COUNTY CIRCUIT COURT RECKLESS MURDER CONVICTION, ON WHICH WYATT WAS SENTENCED TO THIRTY YEAR'S IMPRISONMENT.

THIS COURT PREVIOUSLY AFFIRMED WYATT'S CONVICTIONS AND SENTENCE ON DIRECT APPEAL BY MEMORANDUM OPINION WYATT V. STATE CR-99-1967 (ALA. CRIM. APP. OCT. 20 2000).¹ THE SUPREME COURT OF ALABAMA DENIED WYATT'S PETITION FOR WRIT OF CERTIORARI, AND THIS COURT ISSUED A CERTIFICATE OF JUDGMENT ON APRIL 20, 2001.

THE STATE MOVED TO DISMISS WYATT'S RULE 32 PETITION. ARGUING THAT WYATT'S CLAIM WERE PRECLUDED, WYATT'S FILED A PETITION FOR WRIT OF MANDAMUS IN THIS COURT, ASKING THE COURT TO DIRECT THE TRIAL COURT TO RULE ON HIS PETITION.

THIS COURT DIRECTED THE TRIAL COURT TO RESPOND TO THE PETITION FOR WRIT OF MANDAMUS. AND THE TRIAL COURT DID SO, DISMISSING WYATT'S PETITION ON JUNE 4, 2002, SHORTLY THEREAFTER. THIS COURT DISMISSED WYATT'S PETITION FOR WRIT OF MANDAMUS.

WYATT'S FILED A NOTICE OF APPEAL FROM THE TRIAL COURT'S JUDGMENT ON JUNE 17, 2002 AUTAUGA COUNTY CLERK'S OFFICE INADVERTENTLY FAILED TO SUBMIT THE APPELLATE DOCUMENTS TO THIS COURT. WYATT'S FILED A SECOND RULE 32 PETITION ASKING FOR AN OUT-OF-TIME APPEAL.

AND THE STATE REQUESTED THAT THE TRIAL COURT GRANT WYATT'S PETITION ON THAT GROUND. ON FEBRUARY 11, 2004 THE TRIAL COURT GRANTED WYATT'S THE RIGHT TO FILE AN OUT-OF-TIME APPEAL IN THIS COURT FROM THE DENIAL OF HIS INITIAL RULE 32 PETITION. AND THIS APPEAL FOLLOWED.

ON AUGUST 13TH/2004 COURT OF CRIMINAL APPEAL AFFIRMED WYATT'S APPEAL BY MEMORANDUM PARK EMMETT WYATT V STATE OF ALABAMA

WYATT'S FILED AN APPLICATION FOR REHEARING ON AUGUST 19, 2004. BECAUSE THIS COURT HAS SINCE MISPLACED THE APPELLANT'S APPLICATION FOR REHEARING.

UPON CONSIDERATION OF THE ABOVE, THE COURT OF CRIMINAL APPEALS ORDERS THAT THE APPELLANT SHALL HAVE 21 DAYS FROM THE DATE SEPTEMBER 27, 2004, OF THIS ORDER TO FILE AND SERVED ANOTHER APPLICATION FOR REHEARING.

AND ON NOVEMBER 5, 2004 THE FOLLOWING ACTION WAS TAKEN IN THE ABOVE REFERENCED CAUSE BY THE COURT OF CRIMINAL APPEALS:

APPLICATION FOR REHEARING OVER RULED.

LANE W. MANN- CLERK
COURT OF CRIMINAL APPEALS

STATEMENT OF THE ISSUE

DID THE COURT OF CRIMINAL APPEAL'S ERR WHEN IN THE
DECISIONS MAKING FAILURE TO CONSIDER TRIAL COURT ERR IN DENYING
WYATT'S RULE 32 PETITION WITHOUT ADDRESSED THE ISSUE OF PRISON
CLOTH THAT HE APPEAR BEFORE THE JUROR'S?

STATEMENT OF FACTS

"IN THIS CASE MR. WYATT'S WAS CHARGED WITH MURDER AND RECKLESS MURDER. SAID CHARGES WERE LISTED AS SEPARATE COUNTS ON THE INDICTMENT AND THIS RECKLESS MURDER WAS SPECIFICALLY SET OUT AS ITS OWN CHARGE AND NOT A LESSER INCLUDED OFFENSE AND THE RESULTING END OF THE RECKLESS MURDER MR. WYATT'S WAS SENTENCED TO 30 YEAR'S IMPRISONMENT.

STANDARDS OF REVIEW

A TRIAL COURT'S JUDGMENT DENYING A PETITION FOR POSTCONVICTION RELIEF IS REVIEWED ONLY FOR AN ABOVE OF DISCRETION, AND WILL BE REVERSE FOR ANY INCORRECT DECISIONS.

EX PARTE WILLIAMS STI 502D 989-989-

SUMMARY OF THE ARGUMENT

MR. WYATT'S HAS DEMONSTRATED THAT THE, "FIRST, THE CAUSE OF DEATH WAS NOT A DIRECT RESULT OF THE GUNSHOT WOUND. HOWEVER, PULMONARY EMBOLISM IS A DIRECT RESULT DUE TO THE NEGLIGENCE OF THE CARE. MR. SEARCY RECEIVED.

MR. WYATT'S IS ACTUALLY INNOCENT OF RECKLESS MURDER OR ANY OTHER THAN ASSAULT OR ATTEMPT MURDER."

SCHLUPI v DELO, 513 U.S. 298, 1155, CT. 851, 136 LEO 20 803 (1999)

TRIAL COURT ERR WHEN MR. WYATT'S WAS FORCED TO WEAR PRISON CLOTH IN FRONT OF THE JURY.

ARGUMENT

THE ASSISTANCE FOR APPELLANT CONTENDS TO THIS COURT TO REVERSE THIS CAUSE BACK TO COURT OF CRIMINAL APPEALS FOR THAT COURT TO REVERSE THIS CAUSE BACK TO TRIAL COURT TO HOLD AN EVIDENTIARY HEARING ON THE ISSUE OF FORCED THE APPELLANT TO WEAR PRISON CLOTHS IN THE PRESENCE OF THE JUROR'S, THAT LEAD THE JUROR'S TO ASSUME THAT MR. WYATT'S WAS ALREADY IN JAIL ON OTHER CHARGES, AND PREJUDICE IS THE END RESULT.

THE STATE ARGUMENT "LACK AS A BASIS OF ITS MOTION TO DISMISS, THE INEFFECT WAIVED THAT GROUND OF PRECLUSSION;"
EX PARTE WILLIAMS 571 SO2D 987, 989

THE STATE IN IT'S "MOTION TO DISMISS" WAS ATTEMPTED TO ARGUE THE ISSUE PROCEDURAL BAR. THAT TRIAL COULD APPLIED FOR THE FIRST TIME RAISED THE PROCEDURAL BAR ISSUE IN IT'S REPLY BRIEF AT P. 11.

THE APPELLANT CONTENDS THAT THE COURT OF CRIMINAL DID NOT ADDRESS THE ISSUE BY THE FACT OF ALLEGATION IN THE RULE 32 PETITION, BUT INSTEAD DENIED RELIEF BASED UPON A PROCEDURAL BAR THAT HAD NOT BEEN PLEADED BY THE STATE IN IT MOTION, TO DISMISS NOR BY THE TRIAL COURT IN IT'S ORDER DENYING THE RULE 32 PETITION.

THIS CLEARLY ESTABLISHED CASE LAW IN WHICH THIS RULING IS IN DIRECT CONFLICT IN FALKNER V STATE 386 SO2D 30 AT 42, THIS COULD;

BY NOT ARGUING LACKS AS A BASIS OF ITS MOTION TO DISMISS THE STATE INEFFECT WAIVED THAT GROUND OF PRECLUSSION;"

EX PARTE WILLIAMS 571 SO2D 987, 989.

STANDARDS OF REVIEW

TRIAL COURT'S JUDGMENT DENYING A PETITION FOR POST-
- CONVICTION RELIEF IS REVIEWED ONLY FOR ABOVE OR
- DISCRETION. AND WILL BE REVERSED FOR ANY INCORRECT
- REASONS.

FUGUS V STATE 706 So2d 817 (ALA. CRIM APP. 1997)

AND FURTHER EMPHASIS TO THIS COURT THAT MR. WYATT'S IS ACTUALLY INNOCENT OF MURDER. FIRST, THE CAUSE OF DEATH WAS NOT A DIRECT RESULT OF THE GUNSHOT WOUND. HOWEVER, PULMONARY EMBOLISM IS A DIRECT RESULT DUE TO THE NEGLIGENCE OF THE CARE MR. SEARCY RECEIVED. SECOND, THE GUNSHOT WOUND IS NOT THE DIRECT RESULT FROM COMPLICATIONS FROM THE GUNSHOT WOUND BUT FROM COMPLICATIONS FROM THE OPERATION FROM BEING IMMOBILE, WHICH IS WHAT CAUSE THE PULMONARY EMBOLISM. ALSO, DELIRIUM TREMENS IS NOT A RESULT OF THE GUNSHOT. WITHDRAWAL FROM ALCOHOL IS THE ONLY RESULT OF DELIRIUM TREMENS.

ACCORDING] TO THE TESTIMONY OF DR. FOX HALL, THE PULMONARY EMBOL[ISM] WAS IN THE LARGE VEINS OF MR. SEARCY'S LEGS, DUE TO BEING IMMOBILE.

FUGUZ V STATE 706 So2d 817 (ALA-CRIM. APP. 1997)
 RULE 32.1 (E) (3) (4), AND (5) REGARDING RULE 32-1 (e) (5) (ALA-CRIM. P.) JUSTICE MADDOX STATED IN ALABAMA RULE OF PROCEDURE THE FOLLOWING:
 [T]HE FACTS [MUST] ESTABLISH THAT PETITIONER IS INNOCENT OF THE CRIME FOR WHICH PETITIONER WAS CONVICTED OR SHOULD NOT HAVE RECEIVED THE SENTENCE THAT PETITIONER RECEIVED?

THE APPELLANT CONTENDS TO THIS COURT THAT THE ATTORNEY GENERAL BRIEF THAT WAS FILED ON JULY 6TH/2004. AT PAGE 113 (QUOTE OPINION).

ALTHOUGH WYATT'S WAS REPRESENTED BY DIFFERENT COUNSEL AT TRIAL AND ON DIRECT APPEAL (C-11). WYATT'S INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS DO NOT APPEAR TO BE PROEDURALLY BARRED BY APPELLATE COUNSEL'S FAILURE TO RAISE THE CLAIMS ON DIRECT APPEAL. V.R.V STATE 852 SO20 194-202-203 (ALA. CRIM. APP. 2002) OPINION ON APPLICATION FOR REHEARING).

THIS COURT SHOULD REVIEW THE RECORDS AND RULE ON THE CLAIMS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR ANY REASON STATED IN THE (C) RECORDS ON APPEAL.

November 15th 2004 Carl E. Wootton

15 PM

Carl E. Wyatt
Carl E. Wyatt

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